

REMARKS

This communication is responsive to the Office Action mailed on October 29, 2008, rejecting all pending claims 18, 32-34, 37 and 39-41. No amendments are presented with this response. Reconsideration of the application for the reasons set forth below is requested. Although the Office Action was made final, withdrawal of the final status is also requested for the following reasons.

§112 Rejection

Claims 18, 32-34, 37 and 39-41 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Specifically, the Office Action asserts that there is no support for the amendment reciting the jacket as being elastic because U.S. Patent 5,702,343 is not incorporated by reference. But this is incorrect; patent 5,702,343 is expressly incorporated by reference.

In the last response the applicant noted that patent 5,702,343 is incorporated into this application by reference, and referred to paragraph 0019 of the published version of this application which states that the present invention pertains to improvements to the invention shown in the '343 patent (at least one embodiment of which is elastic). The Office Action correctly notes that there is no express incorporation by reference in paragraph 0019 of the application. However, above-mentioned comments in the earlier response were not intended to suggest otherwise; they were presented to describe the support for the amendment.

The statement expressly incorporating the '343 patent into the present application is in paragraph 0055 of the published version of this application. The applicant regrets any confusion that may have been caused by the remarks in the last response. Withdrawal of the §112 rejection is requested for these reasons.

§103 Rejection

Claims 18, 32-34, 37 and 39-41 stand rejected under 35 U.S.C. §103 as being unpatentable over the Lederman U.S. Patent 6,224,540 in view of the Jamshidi U.S. Patent 5,593,428. As part of this rejection, the Office Action asserts that the Lederman patent

discloses an elastic jacket. Column 5, lines 35-36 of the Lederman patent are pointed to in support of this position. The applicant respectfully disagrees.

The cited passage in the Lederman patent states that the “loop-mesh 32 can readily conform to the shape of the heart with changes in the surface area accompanying the heart contraction” The conforming characteristics referred to in this passage, however, can be completely independent of elasticity. The device could conform without being elastic. Many inelastic materials are capable of operating in this manner. The stated purpose of the device shown in the Lederman patent is to limit the maximum diastolic dimension of the heart. No systolic load is presented to the contracting heart. (Column 5, lines 20-39). The Lederman patent therefore lacks any teaching that the device disclosed therein can be elastic. Since no combination of the steps disclosed in the Lederman and Jamshidi patents can result in a method having the features and advantages of that claimed by the applicant, withdrawal of the §103 rejection is requested.

Finality of the Office Action

The Office Action asserts that the new grounds of rejection were necessitated by the applicant's amendment, and made the action final. For the reasons presented above, however, the bases presented in Office Action do not support the rejections. Withdrawal of the finality of the Office Action and the entry and consideration of this response are therefore requested.


Conclusion

The §112 rejection is based on an incorrect understanding of the application specification and the §103 rejection is not supported by the cited references. Withdrawal of the final status of the Office Action and allowance of the pending claims are requested.

Respectfully submitted,

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